

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2015 DEC -2 PM 1:06

STEVEN SEAWARD

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v.

Civil No. – JFM-14-3410

SYLVIA MATHEWS BURWELL

CLERK'S OFFICE
AT BALTIMORE

BY _____ DEPUTY

MEMORANDUM

Steven Seaward, an African-American employee of the Department of Health and Human Resources, has brought this action for employment discrimination. Defendant has filed a motion to dismiss or for summary judgment. The motion will be granted.


Plaintiff claims that he was discriminated against when he was assigned to the Office of Human Resources within the Food and Drug Administration. In order to prove that he was discriminated against, a plaintiff must establish (1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) treatment different from similarly situated employees outside the protected class. Here, Plaintiff is a member of the protected class and it may be assumed that his job performance was satisfactory and that he was subjected to an adverse employment action. He cannot, however, establish that he was treated differently from similarly situated employees outside the protected class. After an investigation and hearing, the Agency and the EEOC determined that Plaintiff had not been treated differently from similarly situated employees outside the protected class.

It is to be noted, that one of plaintiff's alleged comparators was himself African-American. Further, the two persons with whom plaintiff compares himself were not "similarly situated" in that they held completely different positions than the position held by plaintiff.

Plaintiff also cannot establish that the reasons taken for the Agency's action were pretextual. HHS developed a plan to create the Office of Human Resources, and it was inevitable that some human resources employees would be transferred from other FDA offices to the new office's Maryland location. After a deliberative process, plaintiff was selected as one of the employees to be transferred. His race was incidental to the transfer.

A separate order granting defendant's motion is being entered herewith.

Date: 12/2/15


J. Frederick Motz
United States District Judge